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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,965	03/15/2004	Roland Benitsch	ZTP01P14036	2550
46726	7590	08/31/2006	EXAMINER	
JOHN T. WINBURN 100 BOSCH BOULEVARD NEW BERN, NC 28562			HANSEN, JAMES ORVILLE	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 08/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/801,965	Applicant(s) BENITSCH ET AL.	
	Examiner James O. Hansen	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 and 13 is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.
2. Claims 1-11 & 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In amended claim 1 and new claim 18, it is unclear as to whether applicant is now claiming the combination of a refrigerator and bottles / items. Each claim, initially does not specifically claim bottles [claim 1] or items [claim 18], e.g. "for storing bottles" & "for storing items" respectively, but further down in each claim there appears to be a positive recital of structure, i.e., "the rods supporting the bottles on the drawer" [claim 1] and "the rods supporting the items on the drawer" [claim 18] indicating that these members are possibly now being positively claimed in combination with the refrigerator. Applicant is required to clarify the disclosed claimed material, making the language of the claims consistent with applicant's intent [such as, the rods capable of supporting the items etc.,]. The examiner will take the position that the bottles and items are not positively claimed limitations. It is noted that this interpretation has been the position throughout the prosecution history to date. Consequently, the remaining claims are rejected since they are dependent upon an indefinite claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:
A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4-6, 10, 11 & 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Mertz [U.S. Patent No. 4,109,911]. Mertz (figures 1-3) teaches of a refrigerator, comprising: housing (A of refrigerator) having a cooled interior space; at least one drawer (C) disposed in the interior space capable of storing bottles; the at least one drawer having a frame with two opposite sides (fig. 3); and the at least one drawer having a plurality of rods (b) to be releasably mounted parallel to and spaced apart from one another between the two opposite sides of the frame at selectable distances from one another (it is noted that the rods are deemed to be releasably mounted since the prior art does not expressly state that the rods are permanently affixed to the sides – the removal of just one rod would effectively define a “selectable distance”), wherein the rods have a cross section with an upwardly directed rounding and have a circular cross section (fig. 2). The rods are formed of wood as indicated by the crosshatched nomenclature as readily apparent to the examiner. The rods being mounted to the side elements (a) by a “plug-in” connection [the rods are plugged in or pushed into the elements] as best understood by the examiner. The drawer capable of storing bottles (via the rods – as readily apparent to the examiner) in either a reclining or horizontal position depending upon the type or size of the non-positively claimed bottle that may be stored within the drawer. The drawer includes open spaces between the rods (note fig. 3).

5. Claims 1, 2 & 4-6, 10 & 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Graves [U.S. Patent No. 1,767,976]. Graves (figures 1-4) teaches of a refrigerator, comprising: housing (10) having a cooled interior space; at least one

drawer (12) disposed in the interior space capable of storing bottles; the at least one drawer having a frame with two opposite sides (figs. 1-3); and the at least one drawer having a plurality of rods (20) to be releasably mounted parallel to and spaced apart from one another between the two opposite sides of the frame at selectable distances from one another (it is noted that the rods are deemed to be releasably mounted since the prior art does not expressly state that the rods are permanently affixed to the sides – the removal of just one rod would effectively define a “selectable distance”), wherein the rods have a cross section with an upwardly directed rounding and have a circular cross section (fig. 2). The rods are formed of wood as indicated by the crosshatched nomenclature as readily apparent to the examiner. The rods being mounted to the side elements (depicted in fig. 3) by a “plug-in” connection [the rods are plugged in or pushed into the elements] as best understood by the examiner. The drawer capable of storing bottles (via the rods – as readily apparent to the examiner) in either a reclining or horizontal position depending upon the type or size of the non-positively claimed bottle that may be stored within the drawer.

6. Claims 1, 10, 11 & 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Canio [U.S. Patent No. 1,204,347]. Canio (figures 1-3) teaches of a refrigerator, comprising: housing (10) having a cooled interior space; at least one drawer (13) disposed in the interior space capable of storing bottles; the at least one drawer having a frame with two opposite sides (fig. 3); and the at least one drawer having a plurality of rods (23) to be releasably mounted parallel to and spaced apart from one another between the two opposite sides of the frame at selectable distances from one another (via the cam/lever arrangement). The drawer capable of storing bottles (via the rods – as readily apparent to the examiner) in either a reclining or horizontal position

depending upon the type or size of the non-positively claimed bottle that may be stored within the drawer. The drawer includes open spaces between the rods (note fig. 3 for example).

7. Claims 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Sywert [U.S. Patent No. 2,741,525]. Sywert (figures 1-3) teaches of a refrigerator, comprising: housing (cabinet) having a cooled interior space; at least one drawer (10) disposed in the interior space capable of storing bottles; the at least one drawer having a frame with two opposite sides (depicted in fig. 1); and the at least one drawer having a plurality of rods (20) to be releasably mounted parallel to and spaced apart from one another between the two opposite sides of the frame at selectable distances from one another (it is noted that the rods are viewed as capable of achieving a “releasably mounted” condition since the prior art states that the rods are “secured to the frame in any suitable manner” the position taken that “any suitable manner” may comprise permanent fastening means or non-permanent – the removal of just one rod would effectively define a “selectable distance”). The rods capable of supporting bottles or other articles on the drawer as readily apparent to the examiner. The drawer being mounted for movement with respect to the housing in a first direction {sliding shelf}, and the rods extending in the same direction as readily apparent to the examiner (fig. 1). The drawer includes open spaces between the rods (note fig. 1). The refrigerator further comprising a door (9) pivotally mounted to the housing for providing access to the interior space and limiting access to the space thereby restricting movement of the drawer (fig. 1 – closed condition).

8. Claims 15 & 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Shields [U.S. Patent No. 2,634,867]. Shields (figures 1-11) teaches of an inherent

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refrigerator {the shelf is used in a refrigerator}, comprising: a refrigerator housing having a cooled interior space (as is conventionally known in the art); at least one drawer (defined as a "shelf") disposed in the interior space and capable of storing bottles when disposed within the housing; the at least one drawer having a frame with two opposite sides (fig. 1); and the at least one drawer having a plurality of rods (36) to be releasably mounted parallel to and spaced apart from one another between the two opposite sides of the frame at selectable distances from one another (note figures 9 & 10 showing the rods being pressed into place {releasably secured} – the removal of or the non-placement of just one rod would effectively define a "selectable distance"). The rods capable of supporting bottles or other articles on the drawer as readily apparent to the examiner. The drawer includes open spaces between the rods (note fig. 1). The rods are supported on an upper surface of the frame (fig. 9) and are removable in a vertical direction [the rods are locked into position utilizing a vertical motion / direction and would be removed in a likewise manner].

9. Claims 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Nauert [U.S. Patent No. 2,428,718]. Nauert (figures 1-12) teaches of a refrigerator, comprising: housing (fig. 1) having a cooled interior space; a drawer (shown in figs. 2 or 8) for storing items slidably supported by the housing for movement with respect to the housing and including a frame (see figs.) having a front profile end (front end), a rear profile end (rear end), and lateral rails (20a & 20b or the outer rails for either embodiment - for example) extending along sides of the frame between the front and rear profile ends; a first rod (40a for example) and a second rod (40 for example) releasably mounted to the frame and extending between the front and rear profile ends in a direction substantially parallel to one another, the first rod being movable with

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respect to the frame between a first position and a second position (depending upon the spacers being used), the distance between the first and second rods when the first rod is in the first position being different than the distance between the first and second rods when the first rod is in the second position (note the spacing of the rods as depicted in fig. 8), the rods capable of supporting items on the drawer, wherein the drawer includes open spaces between the rods permitting air flow through the drawer (see figs.). The refrigerator including an inherent door pivotally mounted to the housing (as is conventional in the art) for pivotal movement between an open condition, in which the door provides access to the cooled interior space and permits movement of the drawer, and a closed condition, in which the door restricts movement of the drawer.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mertz.

Mertz teaches applicant's inventive claimed structure as disclosed above, but does not specifically state that the rounding has a diameter of 20mm. However, the position is taken that it would have been an obvious matter of personal choice to vary the diameter of the rods depending upon the stock material available or personal preferences of the designer, since such a modification would have involved a mere

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change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graves. Graves teaches applicant's inventive claimed structure as disclosed above, but does not specifically state that the rounding has a diameter of 20mm. However, the position is taken that it would have been an obvious matter of personal choice to vary the diameter of the rods depending upon the stock material available or personal preferences of the designer, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Allowable Subject Matter

13. Claims 12-13 are allowed.

14. Claims 7-9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. It is noted that if the limitations of claims 6-7 are incorporated into the base claim 1, these changes would essentially duplicate the claimed subject matter of now allowed claim 12.

Response to Arguments

15. Applicant's arguments filed June 20, 2006 have been fully considered but they are not persuasive. In response to applicant's remarks concerning the "releasably mounted" recitation {applicable to the Mertz, Graves, and Canio references} note the following: The examiner maintains that all the claimed structural elements have been

specified and meet as put forth in the prior art rejections. Applicant's position is that "each and every *element* of Claim is not disclosed" due to the recitation in question. The "releasably mounted" recitation is not viewed as being an "element" with respect to novelty in regards to rejections under 102(b). The recitation is deemed to be a functional limitation of the intended use of a particular element. As such, a recitation of the intended use of the claimed invention must result in a structural difference (such as the positive claimed structure of a "pin" and "hole" arrangement as set forth in the "plug-in connection e.g.,) between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Accordingly, the prior art structures are viewed as being capable of performing the intended use since the references themselves do not expressly state to the contrary. The position is taken that a prior art structure is entitled to all its potential uses. Unless the reference specifically states that the rods are permanently affixed or welded or integrally formed etc., the examiner maintains that the rods may be releasably mounted in the functional sense. In response to applicant's remarks concerning the rods being able to support bottles on the drawer, note the following: the position has been retained that bottles are not positively being claimed. The claims merely recite that the drawer is utilized for storing bottles and that the rods support the bottles (note 112(2) rejection). The examiner's position is that the prior art structurally meets the claimed limitations of a drawer with rods, and that these rods are capable of performing the intended use of storing a bottle (shape, size, features of a bottle – not known since a non-positively recited limitation) depending upon the needs or preferences of the user. The fact that some of the references may teach of articles

being placed between the rods does not rule out the reality that the rods can likewise support an article if placed upon them.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

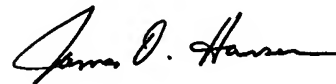
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 571-272-6866. The examiner can normally be reached on Monday-Friday between 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



James O. Hansen
Primary Examiner
Art Unit 3637

JOH
August 29, 2006